released from liability for other articles unless they were accepted by the railroad as baggage. *Wilson v. R. R. Co.*, 56 Me. 62; *K. C., P. & G. R. Co. v. State*, 65 Ark. 363; *R. R. Co. v. Swift*, 12 Wall. 252. In *Saleeby v. R. R.*, *supra*, articles from their nature to be classified as merchandise were held to be baggage through their having been accepted as such by the railroad with knowledge of their character.

LIABILITIES ARISING OUT OF CONTRACTS BETWEEN LABOR UNIONS AND EMPLOYERS.

With the growth of antagonism between labor and capital, and between union and non-union labor, the courts have been increasingly called upon to pass upon the validity of contracts between labor unions and employers. Where the employers have bound themselves to discharge non-union laborers and hire none but union men, the question has generally arisen as a collateral issue in suits brought by the discharged non-union men against the union men who procured their discharge. But few cases are recorded wherein the validity of these contracts has been tested as between the parties themselves. Such was, however, the question in *Jacobs v. Cohen*, 90 N. Y. Supp. 854. The defendants, Cohen & Sons, were sued by Jacobs, president of a labor union, on a promissory note given by them. The consideration was a contract by which the defendants bound themselves to hire none but members of the plaintiff's union who were in good standing and who produced a pass card from the union, and agreed to discharge any person whenever the plaintiff should notify them that such person was not in good standing. The defense was lack of consideration, maintaining that the contract relied upon was unlawful as against public policy.

In *Curran v. Galen*, 152 N. Y. 33, cited by the defense, the plaintiff sought damages from the defendants for having joined in a conspiracy to take away his means of earning a livelihood and prevent him from obtaining employment. The defendants set up a contract to justify their action in causing the plaintiff to be discharged. The judge in his decision said: "Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen is to hamper or to restrict that freedom, and, through contracts or agreements with employers, to coerce other workingmen to become members of the organization, and to come under its rules and conditions, under the penalty of the loss of their positions and of deprivation of employment, then that purpose seems clearly unlawful, and militates against the spirit of our government and the nature of our institutions " It was also held that the fact that the contract was entered into for the purpose of preventing friction between the workingmen's organization and the employer would not legalize a plan of compelling workingmen not in affiliation with the organization to join it at the peril of being deprived of their employment.

In *Nat. Protective Ass'n v. Cumming*, 170 N. Y. 315, it was decided that a labor union may refuse to permit its members to work with fellow servants who are members of a rival organization and may notify the employer that a strike will be ordered unless such servants are discharged, when its action is based upon a proper motive. Such would be a purpose to secure only the employment of efficient and approved workmen, or to secure an exclusive preference of employment to members of the union on their own terms and conditions. If under such circumstances the employees objected to are discharged, neither they nor the organization of which they are members have a right of action against the former union or its members. From the above case it would be inferred that a contract might not be enforced, but that if the employer saw fit to carry it out he could not be enjoined nor could any right of action arise therefrom.

The above conclusion is upheld by a decision rendered in the Appellate Division of the New York Supreme Court in December, 1904, *Mills v. U. S. Printing Co.*, 91 N. Y. Supp. 185, where it was held that an employer could not be enjoined from discharging non-union men in compliance with an agreement to that effect with a union. The theory underlying this proposition is that the employer has the legal right to discharge his men unless hired for a definite period, whenever he sees fit, no matter what his motive for so doing may be. This theory is followed in England, though the rule there is couched in much stronger and more comprehensive language. "No action for conspiracy lies against persons who act in concert to damage another, and do damage him, but who at the same time merely exercise their own rights and who infringe no right of other people." *Mogul Steamship Co. v. McGregor*, 23 Q. B. 598; *Allen v. Flood*, L. R. 1898, A. C. 1; *Quinn v. Leathem*, L. R. 1901, A. C. 495.

In *Jacobs v. Cohen*, *supra*, two of the five judges dissented, Bartlett, J., stating that he could see no reason why a man should not be allowed to contract to hire only a certain class of workingmen if he thought it was to his best interest. If by restricting his right to hire he could procure what he considered a better class of workingmen and other similar advantages, especially when no malicious motive is shown, there seems to be no sound reason why such a contract should not be held valid, provided its object is primarily the betterment of the contracting parties. *Beach on Monopolies and Ind. Trusts*, Sec. 113. The mere act of discharging non-union employees under agreement with a labor union is not an actionable wrong, as shown by the cases cited. No case has been found holding that the voluntary carrying out of such a contract was in any way unlawful; hence there seems to be no reason why the parties could not bind themselves by contract to do that which they might do of their own volition.